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## OLR Bill Analysis

### sSB 413

#### ***AN ACT CONCERNING BONDING AUTHORITY FOR THE CONNECTICUT CLEAN ENERGY AUTHORITY.***

#### **SUMMARY:**

This bill renames the Clean Energy Finance and Investment Authority (CEFIA) the Connecticut Clean Energy Authority (CCEA) and makes CCEA a quasi-public agency. It makes CCEA the successor to CEFIA and Connecticut Innovations, Inc. (CII) for purposes of administering the Clean Energy Fund.

The bill also authorizes CCEA to issue:

1. taxable or tax-exempt revenue bonds with terms of up to 30 years, including bonds backed in whole or part by the Clean Energy Fund and a renewable energy surcharge on electric bills;
2. up to \$100 million in bonds backed by one or more special capital reserve funds (SCRFs) for which the state has contingent liability; and
3. tax-exempt bonds subject to the federal private activity bond cap.

Finally, the bill makes conforming changes to laws governing quasi-public agencies. These changes also conform to provisions in PA 11-80 that designated CEFIA a quasi-public agency.

**EFFECTIVE DATE:** Upon passage, except for the bonding provisions and provisions making CCEA CEFIA's successor, which are effective July 1, 2012.

#### **§§ 5-22 — CONNECTICUT CLEAN ENERGY AUTHORITY *CCEA as a Quasi-Public Agency (§§ 6-9)***

Like CEFIA, the bill makes CCEA a quasi-public agency. It establishes CCEA as a state political subdivision created to perform an essential public and governmental function and states that CCEA cannot be construed as a state agency, institution, or department. Like CEFIA, CCEA is within Connecticut Innovations, Inc. (CII) for administrative purposes only.

The bill extends to CCEA existing statutory requirements that, like other such agencies, it have the state treasurer's or deputy treasurer's approval for (1) any borrowing or bonds secured by state-backed or -guaranteed capital reserve funds and (2) any investment or contract relating to interest rates, currency, or cash flow that subjects a state-backed capital reserve fund to potential liability.

It also includes CCEA's directors and staff in the exemption from personal liability for quasi-public agency directors and staff for actions taken in issuing bonds, so long as the actions are not wanton, reckless, willful, or malicious.

***CCEA as Successor to CEFIA (§§ 5 & 10-22)***

The bill:

1. makes CCEA the CEFIA's successor for the purposes of administering the Clean Energy Fund;
2. gives it all CEFIA's and CII's privileges, immunities, and tax and other exemptions with respect to the fund; and
3. authorizes it to provide financial assistance, including grants, loans, loan guarantees, and debt or equity investments.

The bill gives CCEA the same authority as CEFIA to contract with private sources to raise capital. It requires the authority board to set only the average rate of return for debt rather than for both debt and equity as CEFIA's board must. It allows CCEA to use its own, rather than CII's, accountants to audit the Clean Energy Fund.

The bill makes many changes to conform to the authority's change

of name and allows the Legislative Commissioner's Office, when codifying the changes, to make any other necessary technical changes in the statutes to implement it.

## **§§ 1-4 — CCEA BONDING AUTHORITY**

### ***Revenue and Clean Energy Bonds (§§ 1 & 2)***

The bill allows the CCEA to issue revenue bonds with terms of up to 30 years. The authority may use the bond proceeds for any of its corporate purposes, which, by law, include promoting renewable energy and financing energy efficiency projects.

The bill allows the authority to issue:

1. bonds backed by CCEA's own revenue or revenue from the Clean Energy Fund, including revenue from the renewable energy charge on electric bills;
2. bonds backed by the full faith and credit of any public or private body or by fees, rents, or charges from any CCEA project or contract; and
3. federally taxable bonds, if the authority finds it to be in the public interest and will further its purposes and powers.

Under the bill, the state pledges not to alter the renewable energy charge until bonds backed by the charge are either paid off or the authority makes adequate provisions to protect the bondholders. Authority bonds are not state or municipal obligations and must say so on their face. They do not count towards the state's bond cap.

The bill allows the authority to determine how it will issue and repay the bonds and specifies the terms and conditions it may include in its agreements with bondholders. It allows the authority's board to delegate decisions regarding bond sales to its chairperson, vice-chairperson, a board subcommittee, or other authority officers.

The bill makes CCEA bonds securities in which governments and private entities may invest and allows the authority to buy, hold,

pledge, cancel, or resell its own bonds and notes. The authority may sell bonds (1) at a public sale on sealed proposals at a price and time it chooses or (2) by negotiating with investors.

The bill authorizes or requires CCEA to take several actions to assure payments to its bondholders and promises that the state will not limit or alter the authority's rights until the authority repays its outstanding bonds. It allows the authority to secure that promise by entering into agreements with a trustee representing the bondholders' interests (a "trust of indenture" agreement). It requires the authority to secure principal and interest payments by pledging its revenue, which is also immediately subject to lien without any action on the bondholders' part. The bondholders' lien takes precedence over any other claims on the authority's revenue or assets.

The bill allows the authority to issue bonds to refund its outstanding bonds and specifies conditions for doing so. The authority may treat the cost and expenses of issuing bonds for a project as part of the project's operating costs.

The bill exempts principal and interest payments on CCEA bonds from all taxes except estate and succession taxes, but requires bondholders to include such payments when computing excise and franchise taxes.

### ***Special Capital Reserve Funds (SCRFs) (§ 3)***

The bill allows CCEA to establish one or more SCRFs in connection with its bonds, with the prior approval of the Office of Policy and Management (OPM) secretary and state treasurer or their deputies. It limits the aggregate amount of authority bonds that can be backed by SCRFs to \$100 million.

CCEA may use SCRF funds only for (1) paying SCRF-backed bond principal and interest as it becomes due, (2) buying the authority's bonds, and (3) paying any required redemption premium on bonds redeemed before maturity. Although bonds secured by SCRFs are not backed by the state's full faith and credit, SCRF-backed bonds are a

contingent liability of the state. If a SCRF is exhausted, the state General Fund automatically replenishes it, regardless of the state spending cap.

CCEA can specify a “required minimum capital reserve” when issuing SCRF-backed bonds. By December 1<sup>st</sup> annually, the bill automatically appropriates from the General Fund any amount needed to maintain the minimum reserve balance in the SCRF, as certified by the CCEA chairperson or vice-chairperson to the OPM secretary and state treasurer. Subject to any agreements with bondholders, CCEA must repay any amount paid to it under this provision from its resources when the money is not required for any other of CCEA’s corporate purposes. In any event, the amount must be repaid within one year after all of the authority’s bonds are discharged.

SCRF-backed bonds cannot be used to pay project costs unless the authority determines that the project’s revenue is high enough to cover (1) principal and interest on the bonds used to finance it, (2) any advisable debt service reserves, (3) the cost of keeping the project in good repair and properly insured, and (4) any other required costs for the project.

#### ***Private Activity Bonds (§ 4)***

The bill allows CCEA to issue federal tax-exempt bonds subject to the federal private activity bond cap (see BACKGROUND). Current law allocates up to 27.5% of allowable private activity bonds to municipalities, the Connecticut Higher Education Supplemental Loan Authority, the Connecticut Student Loan Foundation (CSLF), and for contingencies. The bill includes CCEA in this allocation and requires its share to come before any allocation for CSLF or contingencies.

### **BACKGROUND**

#### ***State Capital Reserve Fund (SCRF)***

A SCRF is a debt service reserve fund set up when bonds are issued. The SCRF amount equals one year’s principal and interest on the bonds or 10% of the issue, whichever is less. If an issuer is unable to pay all or part of scheduled principal and interest payments, it may

draw on the SCRF to do so. When the SCRF is drawn down, money from the General Fund is automatically appropriated to restore it. Thus, a SCRF places a contingent liability on the state.

The state permits quasi-public authorities to issue SCRF-backed bonds because the SCRF provides a higher level of repayment security, which results in a lower interest rate on authority bonds.

### ***Private Activity Bonds***

Quasi-public authorities and municipalities can issue private activity bonds. Such bonds are backed by the credit of private borrowers or pools of borrowers, who pay the bond debt service. Federal law exempts private activity bonds from federal tax if they are issued for tax-exempt sewage disposal, water, solid waste disposal, or local district heating and cooling facilities; qualified nonprofit corporation projects; manufacturing projects; or as qualified redevelopment bonds for tax-exempt facilities.

Federal law limits the volume of tax-exempt private activity bonds that can be issued each year. Each state has its own cap. Originally, Connecticut's cap was \$150 million. Since 2002, the amount has increased annually with inflation.

### ***Related Bill***

sSB 415, favorably reported by the Energy and Technology Committee, includes provisions that are virtually identical to this bill.

## **COMMITTEE ACTION**

Finance, Revenue and Bonding Committee

Joint Favorable Substitute

Yea 48      Nay 2      (04/03/2012)